

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION**

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC.,

Defendant.

Case No. 1:22-cv-00061-TSK

**JURY TRIAL DEMANDED**

**NOTICE OF MOOTNESS REGARDING REGENERON'S MOTION TO PRECLUDE  
TESTIMONY OF DR. RUSSELL AND MYLAN'S CONTINGENT  
CROSS MOTION TO STRIKE TESTIMONY OF DR. CSAKY**

Plaintiff Regeneron Pharmaceuticals, Inc. (“Regeneron”) respectfully submits this notice to alert the Court that its motion to exclude the testimony of Dr. Stephen Russell (Dkt. 455-2), Mylan’s only expert regarding noninfringement of U.S. Patent Nos. 10,888,601 (the “’601 patent”) and 11,253,572 (the “’572 patent”), and Mylan’s “contingent cross motion” to exclude the testimony of Regeneron’s expert Dr. Karl Csaky are now moot.

On May 11, 2023, consistent with the Scheduling Order’s deadlines for *Daubert* motions and motions in limine, Regeneron filed a Motion seeking to exclude the testimony of Mylan’s expert regarding infringement of the ’601 and the ’572 patents, Dr. Stephen Russell. Dkt. 455-2. On May 18, 2023, Defendant Mylan Pharmaceuticals Inc. (“Mylan”), filed an opposition to Regeneron’s motion, as well as a “contingent cross-motion” arguing that if Dr. Russell’s testimony were excluded, certain testimony from Dr. Karl Csaky, Regeneron’s expert, should also be stricken. On May 26, 2023, Regeneron filed an opposition to Mylan’s “contingent cross-motion,” asserting that Mylan’s motion was impermissibly late, and that Dr. Csaky’s opinions did not suffer from the same defects that rendered Dr. Russell’s testimony inadmissible.

After Regeneron’s May 26 pleading was filed, Mylan notified Regeneron it no longer intended to call Dr. Russell at trial. Dr. Russell is the only expert from whom Mylan disclosed opinions regarding noninfringement of the ’601 and the ’572 patents, and therefore the issues raised by Regeneron’s motion are now moot. Because Dr. Russell’s testimony will not be excluded, Mylan’s cross-motion, which was contingent on the exclusion of Dr. Russell’s testimony, Dkt. 493 at 2, is likewise moot. Accordingly, Regeneron withdraws its request for the Court to hear argument on this motion at today’s pretrial conference, and submits that both motions may be denied as moot in view of Mylan’s decision not to offer expert testimony regarding noninfringement of the ’601 and the ’572 patents at trial.

Submitted: May 30, 2023

CAREY DOUGLAS KESSLER & RUBY, PLLC

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*/s/ David R. Pogue*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 30, 2023, I electronically filed the foregoing with the Clerk of the Court by using the Court's CM/ECF system. Counsel of record for all parties will be served by the Court's CM/ECF system.

/s/ David R. Pogue

David R. Pogue (WVSB No. 10806)